

EDMUND G. BROWN JR., Attorney General  
of the State of California  
GAIL M. HEPPELL, Supervising  
Deputy Attorney General  
STEPHEN M. BOREMAN, State Bar No. 161498  
Deputy Attorney General  
California Department of Justice  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 323-8203  
Facsimile: (916) 327-2247

Attorneys for Complainant

**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**DANNY LEE ERTMAN  
103 S. H Street # A  
Arcata, CA 95521**

**Physical Therapy License No. PT 19615,  
Respondent.**

Case Nos. 1D-2005-64128 &  
1D-2005-64287

**A C C U S A T I O N**

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell ("Complainant") brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California ("Board").
2. On or about January 26, 1994, Physical Therapy License number PT 19615 was issued by the Board to respondent Danny Lee Ertman (hereinafter "respondent"). At all times relevant to this proceeding, said license has been in full force and effect and will expire unless renewed on March 31, 2009.

///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the  
3 following sections of the Business and Professions Code:

4 A. Section 2609 of the Code provides that the Physical Therapy Board shall  
5 take action against any licensee who is charged with unprofessional conduct.

6 B. Section 2620 of the Code defines “Physical Therapy,” in part, as follows:  
7 “Physical Therapy means the art and science of physical or corrective rehabilitation or of  
8 physical or corrective treatment of any bodily or mental condition of any person by the  
9 use of the physical, chemical, and other properties of heat, light, water, electricity, sound,  
10 massage, and active, passive, and resistive exercise, and shall include physical therapy  
11 evaluation, treatment planning, instruction and consultative services.”

12 C. Section 2630 of the Code provides, in part, that “[i]t is unlawful for any  
13 person or persons to practice, or offer to practice, physical therapy in this state for  
14 compensation received or expected, or to hold himself or herself out as a physical  
15 therapist, unless at the time of so doing the person holds a valid, unexpired, and  
16 unrevoked license issued under this chapter.”

17 D. Section 2660 of the Code provides, in part, that “the board may, suspend  
18 . . . or revoke or impose probationary conditions upon any license, certificate, or approval  
19 issued under this chapter for unprofessional conduct that includes, but is not limited to,  
20 one or any combination of the following causes:  
21

22 . . . .

23 (h) Gross negligence in his or her practice as a  
24 physical therapist or physical therapy assistant.

25 . . . .

26 (j) The aiding or abetting of any person to  
27 violate this chapter or any regulations duly adopted  
28

1 under this chapter.

2 (k) The aiding or abetting of any person to  
3 engage in the unlawful practice of physical therapy.

4 (l) The commission of any fraudulent, dishonest, or  
5 corrupt act which is substantially related to the qualifications,  
6 functions, or duties of a physical therapist or physical therapy  
7 assistant.”

8  
9 **RECOVERY OF COSTS**

10 4. Section 125.3 of the Code provides, in part, that the Physical Therapy  
11 Board may request the administrative law judge to direct a licensee found to have committed a  
12 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
13 investigation and enforcement of the case.

14 5. Section 2661.5 of the Code provides, in part, that the Board may request  
15 the administrative law judge to direct any licensee found to have committed a violation or  
16 violations of the licensing act to pay the Board the sum not to exceed the reasonable costs of the  
17 investigation and prosecution of the case.

18 6. Respondent has engaged in conduct constituting violations of Code section  
19 2660(h), (j), (k), and (l) of the Physical Therapy Practice Act, as set forth in greater detail herein  
20 below.

21 **FIRST CAUSE FOR DISCIPLINE**  
22 **(Unprofessional Conduct/Aiding and Abetting/Fraud)**  
23 **[Bus. & Prof. Code §§ 2660 (h), (j), (k), and (l)]**  
**[Patient Bonnie V.]**

24 7. On or about July 7, 2004, patient Bonnie V. presented to Back in Action,  
25 Inc., upon a referral by her physician for physical therapy regarding complaints of back pain. On  
26 that date, respondent performed an evaluation of the patient and issued a report that contained a  
27 treatment plan. The plan provided for two (2) to three (3) days per week for twelve (12) weeks  
28 of care consisting of Med-X strengthening exercise, instruction in a home exercise program,  
therapeutic exercise, soft tissue mobilization (STM), joint mobilization, ice, heat massage, and

1 “mods.” The daily treatment records at Back in Action, Inc., reveal that Bonnie V. presented for  
2 physical therapy treatment from July 8, 2004 through October 26, 2004. The record also  
3 revealed two additional treatment dates after October 26, 2004, one of which is not dated or  
4 signed, while the other is dated October 28, 2004. Each date of service indicates treatment  
5 consisting of Med-X lumbar and cervical extension exercises. The following dates of physical  
6 therapy service were provided and signed by respondent as part of the patient’s treatment record:  
7 7/7/04 [initial evaluation], 7/8/04, 7/13/04, 7/15/04, 7/19/04, 7/22/04, 8/25/04, 9/16/04, 9/21/04,  
8 9/23/04, 9/28/04, 10/6/04, 10/8/04, 10/13/04, and 10/15/04.

9  
10 8. The billing records involving the care and treatment of Bonnie V. by  
11 respondent indicate billing for “Med-X” as well as other billing codes used. However, there are  
12 no documents to support the billings and billing codes used on the following dates: 7/8/04,  
13 7/13/04, 7/15/04, 7/19/04, 7/22/04, 8/25/04, 9/14/04, 9/16/04, 9/21/04, 9/23/04, 9/28/04, 10/6/04,  
14 10/8/04, 10/13/04, and 10/15/04.

15 9. Darrell R. Slape is the owner and Chief Executive Officer of Back in  
16 Action, Inc.. Mr. Slape is not licensed as a Physical Therapist by the State of California nor is he  
17 licensed as a Physical Therapist Assistant. The daily treatment records nonetheless reveal that  
18 Bonnie V. presented for physical therapy at Back in Action, Inc., that consisted of Med-X lumbar  
19 and cervical extension exercises and treatment - the same as noted in paragraph 7 and 8, above -  
20 that were provided and signed by Mr. Slape on the following dates: 9/14/04, 10/19/04, 10/21/04,  
21 10/26/04, and 10/28/04. The five (5) entries, viz., September 14, 2004, October 19, 21, 26, and  
22 28, 2004, are initialed “DRS” with no co-signature by respondent. Each date of service treatment  
23 indicates Med-X treatments to the lumbar and cervical areas except the visit of September 8,  
24 2004 which indicated Med-X treatment only for the lumbar area. On the billing statements for  
25 the treatment of Bonnie V. by Back in Action, Inc., the following billing codes were presented:

26 \*90901 Biofeedback training by any modality. This is a global or untimed  
27 code used only once per office visit.  
28

- \*97112 Neuromuscular re-education, one or more areas, each 15 minutes
- \*97140 Manual therapy techniques, one or more regions, each 15 minutes
- \*97530 Therapeutic Activities, one or more areas, each 15 minutes
- \*97750 Performance Testing, with written report, each 15 minutes

10. The billing records and billing codes used by DRS involving the care and treatment of Bonnie V. are identical to those reported by respondent. However, none are supported by documentation for the dates 9/14/04, 10/19/04, 10/21/04, 10/26/04, and 10/28/04.

11. Respondent's conduct as set forth in paragraphs 7, 8, 9, and 10, above, separately and collectively constitute unprofessional conduct in violation of sections 2660(h), (j), (k), and (l) of the Physical Therapy Practice Act of the Code in that:

A. The standard of practice requires the therapist to accurately document the actual services provided to the patient on each day of service. The standard of practice also requires that the therapist bill for services actually performed and that the bill reflect the actual service provided the patient. Respondent violated section 2660 (h) (gross negligence) and (l) (fraudulent or dishonest act) of the Code by fraudulently billing for services not actually performed and/or failing to support the billing by documentation evidencing the actual services provided Bonnie V. by respondent on the following dates: 7/8/04, 7/13/04, 7/15/04, 7/19/04, 7/22/04, 8/25/04, 9/14/04, 9/16/04, 9/21/04, 9/23/04, 9/28/04, 10/6/04, 10/8/04, 10/13/04, and 10/15/04.

B. Respondent violated sections 2660 (h), (j), and (k), in that he aided and abetted Darrell Slape in the unlawful practice of physical therapy on the dates of 9/14/04, 10/19/04, 10/21/04, 10/26/04, and 10/28/04, relative to patient Bonnie V.

C. Respondent violated sections 2660 (h) and (l) of the Code by fraudulently billing for services not actually performed and/or failing to support the billing by documentation evidencing the actual services provided Bonnie B. by Darrell Slape on the dates of 9/14/04, 10/19/04, 10/21/04, 10/26/04, and 10/28/04.

**SECOND CAUSE FOR DISCIPLINE**  
**(Unprofessional Conduct/Aiding and Abetting/Fraud)**  
**[Bus. & Prof. Code §§ 2660 (h), (j), (k), and (l)]**  
**[Patient A.D.]**

12. On or about February 2, 2005, patient A.D., a male Medicare patient referred by his primary care physician, presented to respondent at the Back In Action physical therapy offices, with a diagnosis of neck and back pain. Respondent performed an initial evaluation and established a treatment plan, suggesting 2-3 physical therapy visits per week, to include exercises, MedX lumbar and cervical exercises, massage, ice, heat, and related therapy. Thereafter, A.D. presented as indicated for treatment through April 5, 2005. He received four sessions of massage treatment, with documentation written and signed by Kara Hughs, "CMP" and co-signed by respondent. Most treatment entries are signed by Darrell Slape, an unlicensed person, and co-signed by respondent. On or about February 10, 2005, A.D. underwent MedX lumbar exercises which respondent recorded in the patient record. Respondent recorded that these exercises were performed in 164 seconds. Respondent also recorded the patient as completing 229 seconds of cervical MedX exercises. The total MedX exercises recorded for this date is therefore approximately 6.5 minutes. On or about March 11, 2005, MedX lumbar exercises are recorded for A.D. reflecting 103 seconds, with 84 seconds for cervical exercise. This total is slightly over 3 minutes. On or about March 17, 2005, both MedX exercises for A.D. are recorded for a total duration of 220 seconds, or less than 4 minutes. The billing submitted by respondent for the treatment on February 10, 2005, shows two billing codes for therapeutic activities to Medicare, with each code consisting of 15 minutes of treatment, totaling 30 minutes of treatment billed, whereas the patient record reflects only about 7 minutes of treatment. No other services were documented by respondent as being performed on that date. Also billed for patient A.D. on February 10, 2005, were 2 billing codes for biofeedback therapy. However, the patient record reflects no such treatment. In addition, respondent billed Medicare for 30 minutes of neuromuscular reeducation, 15 minutes of manual therapy. The patient record again does not reflect any such treatment or therapy for this date. The patient treatment record for March 11, 2005, reflects 103 seconds of MedX lumbar exercise and 84 seconds of cervical MedX exercise,

1 however respondent billed Medicare for 30 minutes of service and 30 minutes of muscle testing,  
2 15 minutes of therapeutic exercise and 30 minutes of manual therapy. The treatment entries are  
3 made by Darrell Slape, an unlicensed person, and co-signed by respondent. On or about March  
4 17, 2005, the treatment record for A.D. reflects 220 seconds of lumbar and cervical exercises on  
5 the MedX machine. No other services are documented in the patient record. However,  
6 respondent billed Medicare in addition for biofeedback, 30 minutes of neuromuscular  
7 reeducation, 30 minutes of therapeutic activities and 15 minutes of manual therapy.  
8 Respondent's billing for this patient's thirteen other recorded visits reflect similar inaccuracies,  
9 errors and omissions.

10  
11 13. Respondent's conduct as set forth in paragraph 12, above, constitutes  
12 unprofessional conduct in violation of sections 2660(h), (j), (k), and (l) of the Physical Therapy  
13 Practice Act of the Code in that:

14 A. The standard of practice requires the therapist to accurately  
15 document the actual services provided to the patient on each day of service. The standard  
16 of practice also requires that the therapist bill for services actually performed and that the  
17 bill reflect the actual services provided the patient. Respondent violated section 2660 (h)  
18 (gross negligence) and (1) (fraudulent or dishonest act) of the Code by fraudulently  
19 billing for services not actually performed and/or failing to support the billing by  
20 documentation evidencing the actual services provided A.D. by respondent on the  
21 following dates: 2/10/05, 3/11/05, and 3/17/05.

22 B. Respondent violated section 2660 (h), (j), and (k), in that he aided  
23 and abetted Darrell Slape in the unlawful practice of physical therapy on the dates of  
24 2/10/05, 3/11/05, and 3/17/05, in the care and treatment of A.D.

25 C. Respondent violated sections 2660 (h) and (l) of the Code by  
26 fraudulently billing for services not actually performed and/or failing to support the  
27 billing by documentation evidencing the actual services provided A.D. by Darrell Slape  
28 on the dates of 2/10/05, 3/11/05, and 3/17/05.

**THIRD CAUSE FOR DISCIPLINE**  
**(Unprofessional Conduct/Aiding and Abetting/Fraud)**  
**[Bus. & Prof. Code §§ 2660 (h), (j), (k), and (l)]**  
**[Patient M.D.]**

14. On or about March 11, 2005, M.D., a female patient and the spouse of patient A.D. referenced herein above, presented to respondent at the Back In Action physical therapy offices, accompanied by her husband, having been referred by her physician with complaints of a back condition. Upon presentation, M.D. saw Mr. Slape, an unlicensed person, whom she believed at the time was a physical therapist. Mr. Slape diagnosed the patient's problem as "S-I joint dysfunction." Slape then proceeded to give the patient a vigorous massage treatment in the area of her body he described as the "piriformis muscle." Slape also pulled on the patient's right leg. M.A. was sold some vitamins and mineral supplements and referred for future appointments with Slape's massage therapists. On or about March 18, 2005, M.D. attended an appointment without her husband, and was treated by Mr. Slape. Treatment included an evaluation on the MedX machine, which she considered too painful. Mr. Slape told her "no pain, no gain." Thereafter, Mr. Slape placed the patient on a massage table and applied pressure to her sacrum while simultaneously lifting her right leg. Thereafter, the patient complained of pain which she attributes to Slape's treatment. At no time was M.D. seen or treated by respondent. Respondent billed Medicare for treatment of M.D., including 60 minutes of therapeutic massage on 3/11/05, that is not documented in her patient record, 4 units of therapeutic massage on 3/17/05, as well as charges for biofeedback which is undocumented.

15. Respondent's conduct as set forth in paragraph 14, above, constitutes unprofessional conduct in violation of sections 2660(h), (k), and (l) of the Physical Therapy Practice Act of the Code in that:

A. The standard of practice requires the therapist to accurately document the actual services provided to the patient on each day of service. The standard of practice also requires that the therapist bill for services actually performed and that the bill reflect the actual service provided the patient. Respondent violated section 2660 (h) (gross negligence) and (1) (fraudulent or dishonest act) of the Code by fraudulently



1 billing for services not actually performed and/or failing to support the billing by  
2 documentation evidencing the actual services provided M.D. by respondent on the  
3 following dates: 3/11/05, 3/16/05, 3/17/05, 3/18/05 and 3/22/05.

4 B. Respondent violated sections 2660(h), (j), and (k), in that he aided  
5 and abetted Darrell Slape in the unlawful practice of physical therapy on the dates of  
6 3/11/05, 3/16/05, 3/17/05, 3/18/05 and 3/22/05 with regard to patient M.D.

7 C. Respondent violated sections 2660(h) and (l) of the Code by  
8 fraudulently billing for services not actually performed and/or failing to support the  
9 billing by documentation evidencing the actual services provided M.D. by Darrell Slape  
10 on the dates of 3/11/05, 3/16/05, 3/17/05, 3/18/05 and 3/22/05.  
11

12 **PRAYER**

13 **WHEREFORE**, Complainant requests that a hearing be held on the matters  
14 herein alleged, and that following the hearing, the Physical Therapy Board issue a decision:

15 1. Revoking or suspending License Number PT 19615 issued to Danny Lee  
16 Ertman, PT.

17 2. Ordering Danny Lee Ertman, PT, to pay the Physical Therapy Board the  
18 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
19 Professions Code section 2661.5, including the cost of probation monitoring.

20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: February 7, 2008  
22  
23  
24

25 Original Signed By:  
26 STEVEN K. HARTZELL  
27 Executive Officer  
Physical Therapy Board of California  
State of California  
Complainant  
28